

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE**

**IN RE REGIONS MORGAN KEEGAN  
SECURITIES, DERIVATIVE & ERISA  
LITIGATION,**

**CASE NO. 2:09-md-2009**

**W. Thomas Small, Jr.,**

**Plaintiff,**

**v.**

**RMK High Income Fund, Inc., RMK  
Strategic Income Fund, Inc., RMK  
Advantage Income Fund, Inc., RMK  
Multi-Sector High Income Fund, Inc.,  
Morgan Keegan & Company, Inc.,  
Regions Financial Corporation, MK  
Holding, Inc., Morgan Asset  
Management, Inc., James C. Kelsoe,  
Jr., Carter E. Anthony, Brian B.  
Sullivan, Joseph Thompson Weller,  
Allen B. Morgan, and J. Kenneth  
Alderman,**

**Case No. 2:13-cv-02654**

**Defendants.**

**DEFENDANTS' MOTION TO DISMISS AND/OR STRIKE  
PLAINTIFF'S FIRST AND SECOND AMENDED COMPLAINTS**

Defendants Morgan Keegan & Company, Inc. ("Morgan Keegan"), Regions Financial Corporation ("Regions"), MK Holding, Inc. ("MK Holding"), Morgan Asset Management, Inc. ("MAM"), James C. Kelsoe, Jr. ("Kelsoe"), Brian B. Sullivan ("Sullivan"), Joseph Thompson Weller ("Weller"), Allen B. Morgan ("Morgan"), and J. Kenneth Alderman ("Alderman") (collectively "Defendants") respectfully move this Court for an Order dismissing and/or striking Plaintiff's First and Second Amended Complaints, as outlined below, pursuant to Rules 8, 12(b)(6), 12(f), and 15 of the Federal Rules of Civil Procedure. As grounds for this motion, Defendants state as follows:

1. Plaintiff filed his Second Amended Complaint without leave of the Court and without Defendants' consent in violation of Rule 15(a)(2) of the Federal Rules of Civil Procedure, which provides that "a party may amend its pleading only with the opposing party's written consent or the court's leave." Fed. R. Civ. P. 15(a)(2). Accordingly, the Second Amended Complaint is without legal effect and, thus, should be dismissed because it violates Rule 15(a)(2).

2. Notwithstanding the foregoing, the Second Amended Complaint, if covered by the Court's Order of August 4, 2014, should be dismissed because it is well outside the scope of the Court's Order granting permission to amend. Plaintiff has filed a Second Amended Complaint that asserts new never-before-seen claims against Defendants that were dismissed from this action in the Court's order on Defendants' motion to dismiss. Indeed, these newly asserted claims were not part of Plaintiff's proposed amended complaint previously provided to this Court. Thus, Plaintiff's newly added claims under section 15 of the Securities Act of 1933 against Defendants Morgan Keegan, Regions, MK Holding, MAM, Kelsoe, Sullivan, and Weller should be dismissed.

3. If Plaintiff's Second Amended Complaint is found to be operative despite the foregoing arguments, Plaintiff's newly asserted Section 15 claims against Defendants Morgan Keegan, Regions, MK Holding, MAM, Kelsoe, and Sullivan should be dismissed as barred by the applicable 1-year statute of limitations.

4. Whether this Court finds the First or Second Amended Complaint to be operative, they are both due to be struck pursuant to Rule 12(f), which provides that a "court may strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter." Fed. R. Civ. P. 12(f).

For these reasons, as fully set forth in the contemporaneously filed Memorandum of Law, Defendants request that this Court grant its Motion to Dismiss and/or Strike Plaintiff's First and Second Amended Complaints and require Plaintiff to file a complaint in accordance with Rule 8 of the Federal Rules of Civil Procedure that contains "a short and plain statement" of Plaintiff's surviving Section 11 and 15 claims.

Respectfully submitted this 28th day of October, 2014.

*s/ Peter S. Fruin*

Peter S. Fruin

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**CERTIFICATE OF SERVICE**

The undersigned attorney hereby certifies that on October 28, 2014 a true and correct copy of the foregoing document was forwarded by electronic means through the Court's ECF System upon the following:

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